

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RONARD LORA, HUGO RIVERA, MARCO
ANTONIO DIAZ, MELVIN LORA, EDUARDO
LORA, GIOVANNI PAULINO, JOSE RODRIGUEZ,
and JOSE RODOLFO RODRIGUEZ-TINEO,
individually and on behalf of all others similarly
situated,

Plaintiffs,

- against -

J.V. CAR WASH, LTD., BROADWAY HAND
CARWASH CORP., WEBSTER HAND CAR
WASH CORP., HARLEM HAND CAR WASH
INC., BAYWAY HAND CAR WASH CORP.,
JOSE VAZQUEZ, SATURNINO VARGAS, JOSE
JIMENEZ, RAMON PEREZ, DOMINGO "DOE,"
ADOLFO FEDERUS, originally sued as ADOLFO
"DOE," and JOHN DOES 1-10,

Defendants.

Index No. 11-CV-9010 (LLS)

ECF CASE

CLASS ACTION

Civil Action

Jury Trial Demanded

**AFFIDAVIT OF
MARCOS ANTONIO DIAZ**

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STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

MARCOS ANTONIO DIAZ, being duly sworn, deposes and says:

1. I am one of the Plaintiffs in this action. I have personal knowledge of the facts contained in this Affidavit.
2. I am making this Affidavit in response to statements that my former employer, the Defendant Jose Vazquez, has made in his September 5, 2013 affidavit to the Court. Many of Mr. Vazquez's statements in his Affidavit are false.
3. I know that Mr. Vazquez owns both Broadway Hand Car Wash ("Broadway"), which I understand to be the "business name" of J.V. Car Wash Ltd. ("J.V. Car Wash/Broadway"), and Harlem Hand Car Wash ("Harlem"), because I worked for him and the other Defendants at both locations from approximately January 31, 2008, through approximately June 5, 2012. I worked washing, cleaning, drying and/or detailing cars, trucks and other vehicles at both locations.

4. Both J.V. Car Wash/Broadway and Harlem are full-service car washes. The most basic service that a customer can purchase is a regular car wash. However, a customer who comes to either of these car washes can easily see the list of additional services that are available for an extra charge. These additional services, at extra charges, include shampooing, waxing, polishing and other detailing. The list is posted on a large sign at the front of the entrance to each of the car washes, so that customers can read the sign from the street.

5. I also know that Mr. Vazquez owns two other car wash businesses, Webster Hand Car Wash (“Webster”) and Bayway Hand Car Wash (“Bayway”), because I have had many conversations with other individuals (including men who are Plaintiffs in this lawsuit, and men who are not in this lawsuit) who worked for Mr. Vazquez at Webster and at Bayway.

My Work History for the Defendants.

6. On approximately January 30, 2008, I passed by J.V. Car Wash/Broadway on the street. Because I lived in the neighborhood, and I needed a job, I asked one of the workers to tell me who was the manager of the car wash. The worker told me that the manager was Saturnino Vargas, and the worker pointed to where Mr. Vargas was standing near a little shed where there was a washer/dryer machine. I went over to Mr. Vargas, and asked him if he had any work available. Mr. Vargas told me to come back the next morning at 7:30 a.m.

7. I arrived at J.V. Car Wash/Broadway the next day, January 31, 2008, at 7:30 a.m. Mr. Vargas was there, and he immediately put me to work.

8. Mr. Vargas never asked me to fill out a W-4 form. Mr. Vargas never asked me to show him a photo “ID” card.

9. From approximately January 31, 2008, through approximately early July 2009, I worked from 7:30 a.m. to 7:30 p.m., six days a week, at J.V. Car Wash/Broadway. During this time period, J.V. Car Wash/Broadway typically paid me approximately \$50.00 per day. I received this money in cash from Mr. Vargas.

10. From approximately August 2009, through approximately July 2010, I worked from 7:30 a.m. to 7:30 p.m., six days a week, at J.V. Car Wash/Broadway. During this time period, J.V. Car Wash/Broadway typically paid me approximately \$60.00 per day. I received this money in cash from Mr. Vargas.

11. From approximately August 2010, through approximately September 2011, I worked from 7:30 a.m. to 7:30 p.m., three days a week, at J.V. Car Wash/Broadway. During this

time period, J.V. Car Wash/Broadway typically paid me approximately \$70.00 per day. I received this money in cash from Mr. Vargas.

12. From approximately October 2011, through approximately May 19, 2012, I worked from 7:30 a.m. to 7:30 p.m., three days a week (Thursday, Friday and Saturday) at J.V. Car Wash/Broadway, and three days a week (Monday, Tuesday and Wednesday) at Harlem. During this time period, J.V. Car Wash/Broadway and Harlem typically paid me approximately \$70.00 per day. I received this money in cash from Mr. Vargas on the days that I worked at J.V. Car Wash/Broadway, and from Adolfo Federus, who was the manager at Harlem, on the days that I worked at Harlem.

13. During the week of May 20, 2012, I worked two days (Monday and Tuesday) from 7:30 a.m. to 7:30 p.m., at Harlem. For each of these two days, Harlem paid me approximately \$70.00 per day. I received this money in cash from Mr. Federus. During the day on Tuesday, May 22, 2012, I saw Mr. Vazquez was at Harlem, having a discussion with Mr. Federus. At the end of the day on Tuesday, as Mr. Federus was giving me my pay, he told me that he did not need me at Harlem any more, and that if he needed me, he would contact me.

14. During the rest of the week of May 20, 2012, I worked three days (Thursday, Friday and Saturday), from 7:30 a.m. to 7:30 p.m., at J.V. Car Wash/Broadway. For each of these three days, J.V. Car Wash/Broadway paid me approximately \$70.00 per day. I received this money in cash from Mr. Vargas.

15. During the week of May 27, 2012, I worked three days (Thursday, Friday and Saturday), from 7:30 a.m. to 7:30 p.m., at J.V. Car Wash/Broadway. For each of these three days, J.V. Car Wash/Broadway paid me approximately \$70.00 per day. I received this money in cash from Mr. Vargas.

16. I was called in to work from 7:30 a.m. to 7:30 p.m., on Sunday, June 3, 2012, at J.V. Car Wash/Broadway, for which J.V. Car Wash/Broadway paid me approximately \$70.00. I received this money in cash from Mr. Vargas.

17. On or about June 5, 2012, Mr. Vargas told me by telephone that Mr. Vasquez had instructed him to terminate my employment because I was suing the company.

Mr. Vazquez's Businesses Are Not Local.

18. Soon after the time that Mr. Vargas first hired me in January 2008, I learned that workers were driven in a white Ford minibus/van from J.V. Car Wash/Broadway in New York to

work at Mr. Vazquez's car wash location in New Jersey on a daily, round-trip basis. I later learned that the name of the car wash in New Jersey was Bayway.

19. Even though my regularly scheduled work hours began at 7:30 a.m. each day, I frequently was at work earlier, between 7:00 a.m. and 7:20 a.m., to start preparing for my workday. When I arrived at J.V. Car Wash/Broadway by 7:00 a.m., I heard other workers saying that they were going to work in New Jersey. I saw these same workers getting into the white Ford minibus/van, and saw the white Ford minibus/van leave from J.V. Car Wash/Broadway. Every evening that I worked at J.V. Car Wash/Broadway, from January 2008 until Mr. Vargas fired me at Mr. Vazquez's instructions in June 2012, I saw the white Ford minibus/van returning to J.V. Car Wash/Broadway around 7:00 p.m. with the workers from New Jersey.

20. Throughout the time that I worked at J.V. Car Wash/Broadway and/or at Harlem, I regularly saw cars with license plates that were not from New York being washed, cleaned, dried and/or detailed at J.V. Car Wash/Broadway and at Harlem. Specifically, I saw different cars with Connecticut, New Jersey, Virginia and Pennsylvania license plates being washed, cleaned, dried and/or detailed at J.V. Car Wash/Broadway and at Harlem. I saw cars with license plates that were not from New York being washed, cleaned, dried and/or detailed at J.V. Car Wash/Broadway and at Harlem several times every week. I also regularly washed, cleaned, dried and/or detailed cars with license plates that were not from New York at J.V. Car Wash/Broadway and at Harlem.

21. I never had my own business detailing cars at J.V. Car Wash/Broadway or at Harlem. I worked for Mr. Vazquez. At J.V. Car Wash/Broadway, I always followed the instructions of Mr. Vargas, the manager. At Harlem, I always followed the instructions of Mr. Federus, the manager.

22. I am not a "shiftless liar" or a "hooligan," as Mr. Vazquez has called me in his Affidavit. I never threatened or intimidated Mr. Vazquez, Mr. Vargas, or Mr. Federus, or any of the other workers, or any of the customers, at J.V. Car Wash/Broadway or at Harlem. I worked hard for Mr. Vazquez and his businesses. In return, he did not pay me a minimum wage, and he did not pay me overtime for all the hours that I worked for him. I have brought this lawsuit in federal court in order to recover what Mr. Vazquez and his businesses owe me.

23. For these reasons, I respectfully request that the Court deny the Defendants' motion to dismiss this lawsuit, and allow this lawsuit to proceed to trial.

24. This Affidavit has been interpreted for me in Spanish, and I understand its content fully.

Marcos Antonio Diaz
MARCOS ANTONIO DIAZ

Sworn to before me this 17th day
of September, 2013

Laura E. Longobardi
Notary Public

LAURA E. LONGOBARDI
Notary Public, State of New York
No. 02LO4945100
Qualified in Westchester County
Commission Expires Dec. 12, 2014